



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPEAL NO.219 OF 2024

Shri Keshav Narayan Gelkiwar
Age 53 years, Occupation – Agriculture,
R/o. Post. Shivar, Tah. Arni,
District Chandrapur. Pin 445 103

...APPELLANT

VERSUS

1. State of Maharashtra,
through Police Station Officer,
Pomburna Police Station,
Tah. Pomburna, District Chandrapur
2. Moreshwar Kisan Kumbhare
Aged about 46 years, Occu. Business,
R/o. Borda Dixit,
Tq. Pomburna, District Chandrapur

...RESPONDENTS

Mr. S.P. Bhandarkar, Advocate for the appellant.
Mr. D.V. Chauhan, Public Prosecutor for the State.
Mr. R.S. Nayak, Advocate (appointed) for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : JUNE 24, 2024.

ORAL JUDGMENT :

ADMIT. Heard finally with the consent of learned Counsel
for the parties.

2. This is an appeal under Section 14A of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Atrocities Act' for short), the appellant has challenged the order dated 04/01/2024 whereby the Additional Sessions Judge, Chandrapur rejected the bail application of the appellant bearing Special Case No.81/2023.

3. The appellant is arrested on 05/04/2023 in connection with Crime No.40 of 2023 registered at police station Pomburna, Taluka Pomburna, District Chandrapur for the offence punishable under Sections 143, 147, 148, 302, 504 and 506 read with Section 149 of the Indian Penal Code and Sections 3(2)(va), 3(2)(v), 3(1)(r) of the Atrocities Act.

4. The allegation against the present appellant is on the basis of report lodged by the Moreshwar Kisan Kumbhare on an allegation that there was a previous dispute between his family members and the present appellant. On 04/04/2023 at about 8.00 p.m. to 8.30 p.m. he had been to house of his sister-in-law and he was informed by his daughter that the appellant and the other co-accused came to their house and knocking the doors of their house. He immediately went at the house and he saw that they were abusing his father. His father has also sustained the injuries. His father was assaulted

by the present appellant as well as the other co-accused and subsequently his father was found dead. On the basis of said report, police have registered the crime against the present appellant. The present appellant approached to the Special Court for grant of bail but the Special Court has rejected the application holding that there is sufficient material against the present appellant and the offence alleged is of a serious nature.

5. Being aggrieved and dissatisfied with the same, present appeal is preferred by the appellant on the ground that even considering the recitals of the FIR and the investigation papers it reveals that only role assigned to the present appellant is assault by stick on the left hand. The postmortem report shows that the deceased has sustained swelling due to the said blow by the stick. It is submitted by the learned Counsel for the applicant that even accepting the allegation as it is, no offence under Section 302 of the IPC is made out against the present appellant. Learned trial Court has not considered this fact and erroneously rejected the application. He further submitted that now investigation is completed. The co-accused namely Akshay Keshav Gelkiwar and Tulsidas Damodhar Gelkiwar are already released on bail. The role attributed of the present appellant is more lesser than the co-accused who are released on bail.

6. Learned Public Prosecutor and the learned Counsel for the complainant strongly opposed the appeal on the ground that the present appellant and the other co-accused in furtherance of their common object assaulted the deceased, and therefore, deceased succumbed to the death. In view of that, learned trial Court has rightly rejected the application and no ground is made out for interference in the said order.

7. I have heard learned Counsel for both the parties. Perused the recitals of the FIR as well as the other investigation papers from which it reveals that there was a previous dispute between the parties and on 04/04/2023 there was a dispute and due to the dispute the deceased was assaulted.

8. Learned Counsel for the appellant invited my attention towards the postmortem report on page No.109 and submitted that the stomach contents shows there was fluid and food particles which is slightly smell like insecticide. Thus, he submitted that the prosecution has suppressed the origin of the incident and falsely implicated the present appellant.

9. Considering the entire investigation papers and the postmortem report it reveals that only role assigned to the present appellant is assault by stick on his left hand. The probable cause of death

is due to the head injury. The said injury is not attributed to the present appellant. Considering now the investigation is already completed and charge-sheet is filed, two co-accused with the similar allegations are already released on bail, further incarceration of the present appellant is not required. In view of that, the order passed by the Special Court deserves to be quashed and set aside. In view of that, I proceed to pass the following order :

- (i) The appeal is allowed.
- (ii) The order passed by the Additional Sessions Judge, Chandrapur in Special Case No.81/2023 dated 04/01/2024 is hereby quashed and set aside.
- (iii) The appellant – Shri Keshav Narayan Gelkiwar in connection with Crime No.40 of 2023 registered at police station Pomburna, Taluka Pomburna, District Chandrapur for the offence punishable under Sections 143, 147, 148, 302, 504 and 506 read with Section 149 of the Indian Penal Code and Sections 3(2)(va), 3(2)(v), 3(1)(r) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, be released on bail on executing P.R. Bond in the sum of Rs.25,000/- (Rs. Twenty five thousand) with one surety in the like amount.

(iv) The appellant shall attend the proceeding before the trial Court without seeking any exemption unless there are exceptional circumstances.

(v) The appellant shall attend the concerned police station as and when required for the investigation purpose and shall cooperate with the investigating agency.

(vi) The appellant shall not directly or indirectly make any inducement and threat or promise to any person acquainted with the facts of the present case.

10. The appeal is disposed of accordingly.

(URMILA JOSHI-PHALKE, J.)

**Divya*